

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION

ORDER
96-CV-5238 (JG)

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JOHN GLEESON, United States District Judge:

This order addresses jury selection and the conduct of the upcoming trial. The parties are directed to appear before the court for a conference on these subjects on April 9, 2003 at 3:00 p.m.

A. Jury Selection

1. Completion of the Questionnaires -- April 21, 2003

Approximately 450 prospective jurors have been summoned to appear in the ceremonial courtroom on April 21, 2003. They will fill out a questionnaire in two sessions, one beginning at 9:00 a.m., the other at 11:30 a.m. A draft questionnaire is attached, and the comments of counsel on its contents will be invited at the April 9 conference.

Counsel and I will meet in another courtroom on April 21 at 8:45 a.m. and will enter the ceremonial courtroom together at 9:00 a.m. After the prospective jurors are placed under oath, I will explain to them briefly that they will complete the questionnaire, turn it in, and leave. They will be informed with regard to calling in (or being called) to receive instructions as to returning the following week. Court employees will then distribute copies of the questionnaires. Once the prospective jurors begin filling out the questionnaires, counsel and I will leave the courtroom. Court employees will be posted at the doors and will collect a questionnaire from each prospective juror as he or she leaves. The same procedure will be repeated at 11:30 a.m.

There will be no introductions of (or participation by) counsel at these two sessions.

The questionnaires will be numbered consecutively and placed in random order before they are distributed to the prospective jurors.

On the afternoon of April 21, the questionnaires will be placed in numerical order by court staff and transported to an outside copying facility. At the expense of the parties, 8 copies will be made: 2 for the court, 2 for plaintiffs, and 4 for defendants. The original questionnaires will remain at all times in the custody of the Clerk's office, and will be maintained in the Clerk's vault after they have been copied.

By 12:00 p.m. on the afternoon of Wednesday, April 23, 2003, each party shall serve and file a list of jurors (by questionnaire number) who, in the party's view, should be excused (for cause or on hardship grounds) based on the questionnaire. Visa and MasterCard are strongly encouraged to submit a joint list if feasible.

A conference will be held on April 24, 2003, at 9:30 a.m., for the purpose of hearing challenges for cause and excusing prospective jurors on hardship applications based on the questionnaires.

2. Voir Dire

Individual voir dire will commence on April 28, 2003, at 9:00 a.m. I will conduct a brief, individual voir dire of each prospective juror, at the conclusion of which I will hear any challenges for cause. Counsel will not examine the prospective jurors.

3. Peremptory Challenges

When 18 prospective jurors have been qualified, they will be brought into the courtroom together and seated in order. At the sidebar, each side will then exercise three peremptory challenges, one per side in each of three rounds. The plaintiffs will go first in rounds 1 and 3; the defendants (acting jointly) will go first in round 2. Twelve jurors will remain if all challenges are used. Only twelve jurors will be seated; thus, a waiver of a peremptory challenge will, in effect, constitute a challenge to the last remaining prospective juror.

B. The Trial

1. Time Limits

The parties will have a limited number of hours within which to present their cases. A party's clock will be running when it is making an opening statement, examining a witness, making use of evidence, making an oral application to the Court when the jury is out of the courtroom, and summing up. The plaintiffs are allotted 150 hours. The defendants are allotted 170 hours. Visa and MasterCard are directed to divide the defendants' time between themselves; if they cannot agree, I will make such a division. Only in absence of agreement between them will their time be tracked separately. The parties are directed to retain a timekeeper acceptable to both sides to be present in the courtroom to keep track of the time used and to provide daily updates to the Court and counsel. The name of the timekeeper shall be provided to the Court at the April 9 conference.

2. Precharge

In an effort to help the jury better understand the evidence as it comes in, I will give a charge at the outset of the case identifying the essential issues to be tried. These instructions will not be similar in length or depth to those that will be given at the conclusion of the case. My goal

is to provide a brief primer orienting the jurors to the central issues in the trial, in the hope that they will better understand the relevance and significance of evidence as they hear it, rather than in retrospect upon hearing the formal charge. To that end, the parties are directed to submit, on or before 1:00 p.m. on April 8, 2003, proposed precharges not exceeding 10 pages (double-spaced) in length.

3. Interim Statements to the Jury

For the same reason, brief jury addresses, in the form of mini-opening statements and (perhaps) mini-summations, may be appropriate during the trial. For example, such statements may be useful before (and perhaps after) the testimony of expert witnesses. The input of counsel on the issue will be invited at the April 9 conference.

4. Jury Questions and Discussions During Trial

Although permitting jurors to ask questions during trial is generally discouraged, this case may warrant an exception. Similarly, the traditional admonition to jurors not to discuss the case until deliberations commence may not be appropriate in this case, particularly if interim jury addresses and juror questions are permitted. Counsel are invited to consider these issues and to comment on them at the April 9 conference.

5. The Trial Calendar

The trial will begin immediately after jury selection and continue every day, excluding weekends and federal holidays, except June 3 and June 6. I expect opening statements will be made as early as April 29. The trial will be over no later than August 1.

On Mondays through Thursdays, the trial day will begin promptly at 9:00 a.m. and end at 5:30 p.m. The lunch break will be 45 minutes in length, and will be taken at approximately 12:45 p.m. Lunches will be brought in for the jurors. A 15-minute break will be taken mid-

morning and mid-afternoon.

On Fridays, the trial day will begin promptly at 9:00 a.m. and end at 12:30 p.m.

There will be one 15-minute break.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: April 1, 2003
Brooklyn, New York